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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/938,184	08/23/2001	Walter F. Anderson	CM04642H-P01	1947	
22917	7590	04/01/2009	EXAMINER		
MOTOROLA, INC.		PYZUCHA, MICHAEL J			
1303 EAST ALGONQUIN ROAD		ART UNIT		PAPER NUMBER	
IL.01/3RD		2437			
SCHAUMBURG, IL 60196					
NOTIFICATION DATE		DELIVERY MODE			
04/01/2009		ELECTRONIC			

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* WALTER F. ANDERSON, STANLEY J. KNAPCZYK,  
and LARRY MURRILL

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Appeal 2008-3370  
Application 09/938,184  
Technology Center 2400

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Decided:<sup>1</sup> March 30, 2009

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Before JOSEPH L. DIXON, ALLEN R. MACDONALD,  
and ST. JOHN COURTENAY III, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Data (electronic delivery).

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 12-18, which are all of the claims remaining in this

application. Claims 1-11 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

*Invention*

Appellants' invention generally relates to secure communication systems. More particularly, the invention relates to key management methods for secure communication systems. (Spec. 1, ll. 11-13).

*Representative Claim*

12. In a communication system including a centralized key management facility, a manual key delivery device and a number of encryption devices, a method comprising the steps of:

receiving, by a manual key delivery device from a centralized key management facility that is remote from the manual key delivery device, one or more key management messages including indicia of respective target communication devices that are to receive the key management messages;

operably connecting the key delivery device to one or more candidate encryption devices;

determining, by the key delivery device upon connecting to the one or more candidate encryption devices and based on the indicia included in the one or more received key

management messages, which ones of the candidate encryption devices are target encryption devices; and

delivering, from the key delivery device, one or more key management messages to the candidate encryption devices determined by the key delivery device to be target encryption devices.

*Prior Art*

The Examiner relies on the following references:

Gardeck	US 5,471,532	Nov. 28, 1995
Doiron	US 5,481,610	Jan. 2, 1996
Miller	US 6,208,612 B1	Mar. 27, 2001

Schneider, "Applied Cryptography," CRC Press, 1996, pp. 1-2.

*Examiner's Rejections*

I. Claims 12 and 13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Gardeck.

II. Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Gardeck and Doiron.

III. Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Gardeck and Miller.

IV. Claims 16-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gardeck and Schneider.

Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

*Claim Groupings*

Based on Appellants' arguments in the Appeal Brief, we will decide the appeal on the basis of claims 12, 14, 15 and 16. *See* 37 C.F.R. § 41.37(c)(1)(vii).

FINDINGS OF FACT

In our analysis *infra*, we rely on the following findings of fact (FF) that are supported by a preponderance of the evidence:

1. Appellants' Specification discloses that manual rekeying is the act of physically making contact between a key delivery device (e.g., Key Variable Loader, or KVL). (Col. 2, ll. 2-5).

2. Appellants' Specification teaches that "wireless communications or other suitable means might be used to communicate key management messages from the key delivery device 101 to the encryption device 103." (Spec. 6, ll. 20-25).

3. Appellants' Specification is silent with regards to a *manual* key delivery device.

4. The last three (3) limitations of independent claim 12 do not recite the term "manual."

5. Gardeck discloses a home unit that sends a re-key information packet of a roaming unit to a first key device. (Fig. 3 and col. 3, l. 45- col. 4, l. 4).

#### APPELLANTS' CONTENTIONS

1. Appellants contend that Gardeck fails to disclose a manual key delivery device to update the communication units. (App. Br. 10).
2. Appellants contend that Gardeck is directed to over-the-air rekeying of roaming communication units. (Id.).
3. Appellants contend that Gardeck excludes the use of the “alternative” KVL or claimed manual ‘key delivery device’ of claim 12. (Reply Br. 5).

#### EXAMINER'S FINDINGS

The Examiner determined that Gardeck discloses receiving, by a manual key delivery device, one or more key management messages including indicia of respective target communication devices that are to receive the key management messages. (Ans. 3-4)

#### ISSUE

Based upon our review of the administrative record, we have determined that the following issue is dispositive in this appeal:

Have Appellants shown that the Examiner erred in determining that Gardeck discloses a “manual key delivery device?”

#### PRINCIPLES OF LAW

##### *Claim Interpretation*

The *claims* measure the invention. *See SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc). During prosecution before the USPTO, claims are to be given their broadest reasonable

interpretation, and the scope of a claim cannot be narrowed by reading disclosed limitations into the claim. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989); *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969).

“Giving claims their broadest reasonable construction ‘serves the public interest by reducing the possibility that claims, finally allowed, will be given broader scope than is justified.’” *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (quoting *In re Yamamoto*, 740 F.2d 1569, 1571 (Fed. Cir. 1984)). “An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.” *Zletz*, 893 F.2d at 322. “Construing claims broadly during prosecution is not unfair to the applicant . . . because the applicant has the opportunity to amend the claims to obtain more precise claim coverage.” *American Academy*, 367 F.3d at 1364.

“[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability. If that burden is met, the burden of coming forward with evidence or argument shifts to the applicant.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

#### *Anticipation*

“Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” *Lindemann Maschinenfabrik GmbH v. American Hoist &*

*Derrick Co.*, 730 F.2d 1452, 1458 (Fed. Cir. 1984). For a prior art reference to anticipate in terms of 35 U.S.C. § 102, every element of the claimed invention must be identically shown in a single reference. However, this is not an “*ipsissimis verbis*” test. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

## ANALYSIS

### *Section 102 rejection of claims 12 and 13*

As noted above, Appellants argue that Gardeck fails to disclose a manual key delivery device to update the communication units. More specifically, Appellants contend that no manual key delivery device is used in Gardeck to update the communication units. Appellants also contend that Gardeck’s key units are used to send the updated key information and the key units assign a key by over-the-air rekeying. (App. Br. 10).

At the outset, we note that Appellants have not disclosed an express definition of a “manual key delivery device.” (See FF 1 and 3). The Specification expressly discloses “manual rekeying,” a “key delivery device,” and a “manual rekeying scheme.” (FF 1-2). We further note that the Specification describes the alternative of updating keys either by the manual scheme, wirelessly, or by “other suitable means.” (FF 2). In light of the breadth of Appellants’ Specification, we broadly but reasonably construe the claimed “manual key delivery device” as a key delivery device that may be operated using a manual scheme, wirelessly, or by any other suitable means.

As noted above, Gardeck teaches a key delivery device (i.e., a first key unit) that receives one or more key management messages remotely. (*See FF 5*). Given our claim construction discussion above (that does not preclude wireless or other suitable means), we find that Gardeck describes a “manual key delivery device,” as recited in Appellants’ claim 12.

Regarding Appellants’ arguments concerning the remaining limitations of claim 12 (App. Br. 11), we note that Appellants’ arguments are based on the alleged missing element of a manual key delivery device. This argument has been addressed *supra* and was found unpersuasive. We further note that the remaining limitations do not recite the term “manual,” which further supports our aforementioned claim construction.

Based on the record before us, we find Appellants have not shown that the Examiner erred in determining that Gardeck discloses a manual key delivery device, as recited in representative claim 12.

Accordingly, we sustain the Examiner’s rejection of representative claim 12, and claim 13 which falls therewith, as being anticipated by Gardeck under 35 U.S.C. § 102(b).

#### *Section 103 rejection of claim 14*

We next consider the Examiner’s rejection of claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Gardeck and Doiron. Appellants essentially argue that Doiron fails to cure the deficiencies of Gardeck with regard to claim 12 from which claim 14 depends. (App. Br. 11-12). Thus, patentability is urged based on Appellants’ arguments regarding claim 12 (*discussed supra*), which we found unpersuasive.

We find no deficiencies with Gardeck, as previously discussed. Based on the record before us, Appellants have not met their burden of showing error in the Examiner's prima facie case of obviousness. Accordingly, we sustain the Examiner's rejection of claim 14 as being unpatentable over Gardeck and Doiron.

*Section 103 rejection of claim 15*

We next consider the Examiner's rejection of claim 15 under 35 U.S.C. § 103(a) as being unpatentable over Gardeck and Miller. Similar to claim 14 above, Appellants essentially argue that Miller fails to cure the deficiencies of Gardeck with regard to claim 12 from which claim 15 depends. (App. Br. 12). Thus, patentability is urged based on Appellants' arguments regarding claim 12 (*discussed supra*), which we found unpersuasive.

We find no deficiencies with Gardeck, as previously discussed. Based on the record before us, Appellants have not met their burden of showing error in the Examiner's prima facie case of obviousness. Accordingly, we sustain the Examiner's rejection of claim 15 as being unpatentable over Gardeck and Miller.

*Section 103 rejection of claims 16-18*

We next consider the Examiner's rejection of claims 16-18 under 35 U.S.C. § 103(a) as being unpatentable over Gardeck and Schneier. Again, Appellants essentially argue that Schneier fails to cure the deficiencies of Gardeck with regard to claim 12 from which representative claim 16

depends. (App. Br. 11-12). Thus, patentability is urged based on Appellants' arguments regarding claim 12 (discussed *supra*), which we found unpersuasive.

We find no deficiencies with Gardeck, as previously discussed. Based on the record before us, Appellants have not met their burden of showing error in the Examiner's *prima facie* case of obviousness. Accordingly, we sustain the Examiner's rejection of claims 16-18 as being unpatentable over Gardeck and Schneier.

#### CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in determining that Gardeck discloses a manual key delivery device.

#### DECISION

The Examiner's rejection of claims 12 and 13 under 35 U.S.C. § 102(b) is affirmed.

The Examiner's rejections of claims 14-18 under 35 U.S.C. § 103(a) are affirmed.

Appeal 2008-3370  
Application 09/938,184

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

pgc

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